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LUKE D. BRUGNARA
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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 UNITED STATES OF AMERICA,
12
13 Plaintiff,
14 v.
15 LUKE D. BRUGNARA,
16 Defendants.
17

Case No. CR-14-0306-WHA

**MOTION TO WITHDRAW AS COUNSEL
OF RECORD; MEMORANDUM IN
SUPPORT OF MOTION TO WITHDRAW
AS COUNSEL OF RECORD**

Date: March 17, 2015
Time: 2:00 p.m.
Judge: Hon. William Alsup

1 TO ASSISTANT UNITED STATES ATTORNEYS, ROBIN L. HARRIS AND BENJAMIN
2 KINGSLEY:

3 PLEASE TAKE NOTICE that on March 17, 2015 at 2:00 p.m., or as soon thereafter as the
4 matter may be heard, the undersigned counsel will and hereby does move the Court for an order
5 allowing him to withdraw as counsel of record. This motion is made on the grounds that there has
6 been a significant breakdown in communication that is substantially interfering with the attorney-
7 client relationship. This motion is based on the attached memorandum and declaration (filed under
8 seal), the prior pleadings filed and hearings held in this case, and on any other ex parte under seal
9 information provided to the Court during the hearing on the motion.

10 Respectfully submitted,

11 K&L GATES LLP

12 Dated: March 3, 2015

13 By: 

14 Jeffrey L. Bornstein
15 Peter E. Soskin
16 Attorneys for Defendant
17 LUKE D. BRUGNARA
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MEMORANDUM IN SUPPORT OF MOTION

I. The Court Must Allow Counsel to Withdraw as There is an Irreconcilable Conflict.

Mr. Brugnara has a constitutional right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution. That includes the right to conflict-free counsel. *See Garcia v. Bunell*, 33 F.3d 1193, 1195 (9th Cir. 1994). Although Mr. Brugnara is not entitled to a particular appointed lawyer, *Morris v. Slappy*, 461 U.S. 1, 3-4, 75 L. Ed. 2d 610, 103 S. Ct. 1610 (1983), if the relationship between lawyer and client completely collapses, the refusal to allow counsel to withdraw and to substitute new counsel violates his Sixth Amendment right to effective assistance of counsel, *Moore, supra*; *Brown v. Crave*, 424 F.2d 1166, 1170 (9th Cir. 1970). This is true even if present counsel's representation is effective and competent. *United States v. Musa*, 220 F.3d 1096, 1102 (9th Cir. 2000) cert. denied, 531 U.S. 999 (2000)).

The Court must determine whether there is an "extensive, irreconcilable conflict" between a defendant and his appointed counsel. *United States v. Smith*, 282 F.3d 758, 763 (9th Cir. 2002). This conflict must have led to "a significant breakdown in communication that substantially interfered with the attorney-client relationship." *United States v. Adezlo-Gonzalez*, 268 F.3d 772, 779 (9th Cir. 2001). For the reasons set forth in the declaration filed under seal, as well as any information provided to the Court during an ex parte sealed hearing the undersigned requests that he be allowed to withdraw as counsel of record.

Respectfully submitted,

K&L GATES LLP

Dated: March 3, 2015

By: 

Jeffrey L. Bornstein
Peter E. Soskin
Attorneys for Defendant
LUKE D. BRUGNARA